(2)

No. 05-1470

Supreme Court, U.S.
FILED
JUN 16 2006
OFFICE OF THE CLERK

In The
Supreme Court of the United States

RUDOLPH BRUNER,

Petitioner,

vs.

STATE OF OKLAHOMA, EX REL.
OKLAHOMA TAX COMMISSION,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Civil Appeals Of Oklahoma, Second Division

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

May it please the Honorable Supreme Court:

Comes now the Oklahoma Tax Commission, Respondent/Appellee in the Courts of the State of Oklahoma and Respondent to the Petition for Writ of Certiorari to the Court of Civil Appeals of Oklahoma, Second Division, filed herein by Rudolph Bruner (hereafter, "Petition"), Protestant/Appellant in the Courts below (hereafter, "Petitioner"), and for its Response to the Petition, would show and represent:

STATEMENT OF THE CASE

Petitioner's Statement of the Case is inaccurate, and must be challenged. Petitioner's grandfather, a full-blood member of the Creek (Muscogee) Nation, made his selection of homestead and allotment properties in 1900 (Appendix A hereto). The allotments were made pursuant to the Curtis Act (Act of June 28, 1898, 30 Stat. 495). Allotments made pursuant to the Curtis Act were temporary, provisional grants of the right of exclusive use and occupancy of the surface only of the lands selected. The temporary, provisional allotments made pursuant to the Curtis Act became final and conclusive upon the ratification of allotments made pursuant to the Curtis Act by Section 6 of the Original Creek Agreement of March 1, 1901 (31 Stat. 861) ratified by the Creek Nation on May 25, 1901 (32 Stat. 1971), which provided for a general allotment of tribal lands to tribal citizens and issuance of deeds or patents to tribal members, conveying tribal title to the allotment. Separate deeds for the homestead (40 acres, Appendix C hereto) and allotment (120 acres, Appendix B

hereto) in 1903. Petitioner's grandfather died, intestate, on May 15, 1903 (Oklahoma Record on Appeal [hereafter, "ROA"], p. 14). The homestead and allotment descended to Richard Bruner, Petitioner's father, who died, intestate, on September 19, 1981; Petitioner and his two brothers each took an undivided one-third interest in the homestead and allotment (ROA, pp. 14-15). On June 21, 1983, Petitioner and his brothers, appearing through counsel and the U.S. Probate Attorney, obtained approval of an oil and gas lease of their inheritance (ROA, p. 14).

On October 31, 1997, Petitioner filed an Application for Refund of gross production and petroleum excise taxes paid on oil and gas production from the inheritance from 1989 through 1994 (ROA, pp. 1-93). The Administrative Law Judge assigned to the case entered a "Recommendation of Partial Dismissal", finding the claim time-barred as to all claims for refund of taxes paid more than three years from the date of the Application for Refund, pursuant to 68 O.S. § 1008 (Appendix D hereto) (ROA, pp. 173-177). Petitioner moved for reconsideration, which was denied (ROA, pp. 170-171). Petitioner, pursuant to applicable Oklahoma law, sought review by the Commissioners of the Oklahoma Tax Commission, which adopted the recommendation of the ALJ as its Order (ROA, pp. 172-177). Petitioner sought review from the Oklahoma Appellate Courts. The Oklahoma Court of Appeals affirmed the Oklahoma Tax Commission's Order in a published opinion, *In re: Gross Production and Petroleum Excise Tax Protest of Bruner,* 2006 OK CIV APP 21, 130 P.3d 767. Petitioner sought review by Writ of Certiorari from the Oklahoma Supreme Court, which denied the Petition on February 21, 2006 (Petitioner's Appendix, p. 11-a). Petitioner's claims which were not adjudicated time-barred remain pending

for adjudication, awaiting the exhaustion of the appellate process.

ARGUMENT AND AUTHORITIES SUPPORTING DENIAL OF THE PETITION

Proposition 1: Oklahoma's taxation of the proceeds from production of oil and gas from restricted Indian lands which Petitioner has inherited is neither illegal nor unconstitutional.

Petitioner's Question/Proposition 1 may be summarized: Section 3 of the act of May 10, 1928 (45 Stat. 495), which provided that all minerals, including oil and gas, produced on or after April 26, from restricted allotted lands of members of the Five Civilized Tribes in Oklahoma, or from inherited restricted lands of full-blood Indian heirs of such lands shall be subject to all State and Federal taxes of every kind and character the same as those produced from lands owned by other citizens of Oklahoma is unconstitutional, as applied to Petitioner.

Oklahoma's response to the question/proposition may be summarized: Petitioner's grandfather selected a 40 acre homestead and 120 acre allotment, pursuant to the Curtis Act, in 1900. Petitioner's grandfather received title to the property by homestead and allotment deeds in 1903. The deed to the homestead property provided that it would be tax-exempt for a period of 21 years. No such exemption was made in the allotment deed. Petitioner's grandfather died in 1903, prior to the issuance of the homestead and allotment deeds from the Creek Nation in 1903. The tax exemption on the homestead of Petitioner's grandfather expired in 1924, before adoption of the Act of May 10,

1928. Therefore, said Act did not revoke the homestead tax exemption of Petitioner's grandfather and was not a taking prohibited by the Fifth Amendment, U.S. Constitution.

The case which is most instructive, as well as dispositive of most of the issues in this appeal is *Woodward vs. DeGraffenried*, 238 U.S. 284, 35 S. Ct. 764, 59 L. Ed. 1310 (1915). At issue was which laws of descent and distribution applied concerning the allotment of a Creek (Muscogee) woman, who died in 1900, after selecting her allotment pursuant to the Curtis Act. (*Id.* at p. 285) To determine the answer, the Court examined the history of allotments from the lands of the Creek Nation. Allotments began, without the consent of the Creek Nation, pursuant to the Curtis Act. The Curtis Act had, as its object, administration of the trusts imposed upon the several tribes by early treaties, that the beneficial use of the tribal domain should be enjoyed equally by all members of the tribe, and monopolization of the tribal domain prevented. (*Id.* at p. 305) The Curtis Act resulted in temporary, provisional allotments which were "not final even for the purposes of the Curtis Act. (*Id.* at p. 307) The allotments authorized by Section 11 of the Curtis Act were of "the exclusive use and occupancy of the *surface* of all tribal lands susceptible of allotment." (*Id.* at p. 290) The title of the Tribe was not extinguished by the Curtis Act. This, the Court concluded, conferred on the allottees nothing more than an exclusive right to possess and enjoy the surface of the land during the lifetime of the allottees. (*Id.* at p. 292) The Court extensively cited from Reports of the Dawes Commission, noting that "These selections [of allotments] were treated as 'preliminary' and the allotments as 'temporary'. The difficulties to overcome before complete and

final allotment were great and unprecedented. (7th Report, p. 12) For instance, the Creek citizenship rolls had not been completed at the time of the making of the Agnes Hawes allotment, nor were they, indeed until some time in the year 1902". (*Id.* at p. 309) Citing to regulations of the Secretary of Interior, the Court concluded: "They [the regulations] contemplated temporary allotments, intended to be approximately equal to what each citizen would get from final allotment". (*Id.* at pp. 310-311)

Referring to the agreement reached between the Creek Nation and the United States, referred to as the "Original Creek Agreement", the Court found that: "These [Sections 6, 7 and 28 of the Original Creek Agreement] and other provisions of the [Original Creek] Agreement respecting the allotment of lands show that it was the intention of the parties to accept and confirm the allotment work already performed by the Dawes Commission, with the same effect as if it had been done after the ratification of the agreement". (*Id.* at pp. 312-313) Pursuant to the Original Creek Agreement, the Court concluded, as to Curtis Act allotments: "That which had been tentative and provisional then became, by force of the provisions of the [Original Creek] Agreement, final and conclusive". (*Id.* at p. 314)

The analysis used by the *Woodward* Court is applicable to the facts presented in this appeal. Petitioner's grandfather selected an allotment under the Dawes Act in 1900, as shown by an excerpt from the Creek Nation rolls (Appendix A hereto). Petitioner's grandfather died, intestate, on May 15, 1903 (ROA, p. 14). Subsequently, by allotment deed (Appendix B hereto) and homestead deed (Appendix C hereto), Petitioner's grandfather was deeded title to his allotment. At that time, that which had been

tentative and provisional then became, by force of the provisions of the Original Creek Agreement, final and conclusive.

The estate granted to Petitioner's grandfather is described in the two allotment conveyances. As to the homestead conveyance: "... said land shall be non-taxable and inalienable and free from any encumbrances whatever for twenty-one years" (Appendix C hereto). No such provision was contained in the allotment conveyance (Appendix B hereto).

Pursuant to the plain language of the conveyances, the exemption from taxation, encumbrance and restriction upon alienation expired twenty-one years from the date of the conveyances, which were made by the Principal Chief of the Creek Nation on September 25, 1903, and approved by the Secretary of the Interior on October 22, 1903 (Appendices B and C hereto).

While it is true that subsequent acts of Congress extended the tax exemption provided in the Original and Supplemental Creek Agreements: the "Curtis Act of 1906", 34 Stat. 137 extended the tax-exempt status for twenty-five years, as long as title remained in the *original allottee*; the Act dated May 10, 1928, 45 Stat. 495, extended the tax-exempt status an additional twenty-five years; and an Act dated August 11, 1955, 69 Stat. 666, extended restrictions on alienation for the *owner's* life (Petitioner's Appendix D-4). Petitioner's grandfather and predecessor in title died, intestate, in May, 1903, three years before the "Curtis Act of 1906". Title passed to Petitioner's father (ROA, p. 100), who was not the original allottee. Thus, the tax exemption conferred by the Original and Supplemental Creek Agreements expired in 1924, twenty-one years from

the date of the allotment conveyances to Petitioner's grandfather.

In 1931, seven years after the tax exemption on the homestead portion of the allotment had expired (there was never a tax exemption on the general allotment), Congress passed the Act of May 10, 1928, 45 Stat. 495 (Petitioner's Appendix D-1), which provided, at Section 3: "That all minerals, including oil and gas, produced on or after April 26, 1931, from restricted allottee lands of members of the Five Civilized Tribes in Oklahoma or from *inherited restricted* lands of full-blood Indian *heirs or devisees* of such lands, shall be subject to all State and Federal taxes of every kind and character the same as those produced from lands owned by other citizens of the state of Oklahoma . . . ". (emphasis supplied) So, the 1928 Act was neither unconstitutional nor a taking with regard to the tax exemption on the homestead allotment of Petitioner's grandfather, which had expired seven years earlier.

In a related proceeding, Petitioner's brother, Richard Bruner, Jr., filed suit in the U.S. District Court, N.D.OK, seeking to recover federal income tax paid on income from oil and gas production from his share of the inheritance. Petitioner's brother espoused the same legal theories in his action, as does Plaintiff in this action. Petitioner's brother was unsuccessful; his claim was rejected by a thorough and scholarly opinion in *Bruner vs. U.S.*, 340 F.Supp. 2d 1204 (N.D.OK 2004). The Oklahoma Court of Appeals, in considering Petitioner's appeal, cited and relied upon Judge Holmes' opinion and analysis, see *In re: Gross Production and Petroleum Excise Tax Protest of Bruner,* 2006 OK CIV APP 21, par. 11, 130 P.3d 767, 770-771.

The error and fallacy in Petitioner's case is the failure to recognize that the temporary allotment Petitioner's grandfather received pursuant to the Curtis Act did not become a conveyance of title until the Original and Supplemental Creek Agreements, which conferred a tax exemption, but only for a limited time. Petitioner's suggestion that the Act of 1928 is unconstitutional, as applied to him, ignores the conclusion in *Chickasaw Nation vs. United States*, 208 F.3d 871, 880 (10th Cir. 2000), *aff'd*, 534 U.S. 84, 122 S. Ct. 528, 151 L. Ed. 2d 474 (2001) that the Supreme Court has never held unconstitutional a federal tax applied to Indians.

Choate vs. Trapp, 224 U.S. 665, 32 S. Ct. 565, 56 L. Ed. 941 (1912), which Petitioner cites and relies upon, involved allotments to Choctaw and Chickasaw citizens, which had a right to tax exemption for a specified time, twenty-one years. On May 27, 1908, an act of Congress removed restrictions on the sale or encumbrance of land by Indians of the class to which those plaintiffs belonged and provided that lands on which restrictions were removed were subject to taxation. An Oklahoma county then sought to tax those plaintiffs' property. The Supreme Court held that restrictions on alienation and exemption from taxation were two separate and distinct subjects. (*Id.* at p. 671) The Court concluded that the Congress could remove the disability as to alienation, but that a vested right of tax exemption for a specified period of time existed, which Congress could not take away. (*Id.* at pp. 677-678) Rightly and fairly, that exemption, which had yet to expire, could not be subsequently abrogated. But, in this case, the tax exemption expired before enactment of the Act of May 10, 1928. *Choate* is inapplicable.

Nor is the case of *English vs. Richardson*, 224 U.S. 680, 32 S. Ct. 571, 56 L. Ed. 949 (1912) supportive of Petitioner. Although that case involved a Creek citizen, whose homestead allotment an Oklahoma county sought to tax pursuant to the referenced 1908 Act of Congress, the result was the same and controlled by *Choate,* because the term of the tax exemption conferred by the homestead allotment conveyance had yet to expire. (*Id.* at p. 680) The holding was right and fair; Congress could not take back the exemption during its term. So, *English* does not support Petitioner's position.

Petitioner cites and relies upon *Woodward vs. DeGraffenried, supra,* suggesting that it stands for the proposition that the tax exemption was "vested" upon selection of the allotment. As discussed, the temporary/provisional allotment pursuant to the Curtis Act became final pursuant to the Original and Supplemental Creek Agreements, pursuant to which Petitioner's grandfather's allotments were issued. The homestead allotment provided a tax exemption for a period of twenty-one years (Appendix C hereto). The other allotment did not (Appendix B hereto). The Act of May 10, 1928 did not serve to terminate the tax exemption granted as to Petitioner's grandfather's homestead. As noted, that exemption had expired, pursuant to its own terms, some seven years earlier.

Petitioner mistakenly suggests that the decision in *Carter Oil Co. vs. Oklahoma Tax Commission*, 1933 OK 530, 25 P.2d 1092, found the Act of May 10, 1928 unconstitutional. The contrary is true; the Court found the Act to be constitutional. (*Id.* at p. 1096) The Court did find that the Act did not divest a Seminole citizen of the tax exemption conferred by his homestead allotment conveyance. That conclusion was based on the fact that his conveyance

provided that it was "non taxable as a homestead in perpetuity". (*Id.* at p. 1093) Thus, Oklahoma Court applied the rule of *Choate*, that an tax exemption conferred could not be revoked within its term. (*Id.* at p. 1095) In the present case, the exemption expired per its terms before the Act of May 10, 1928 was enacted. The *Carter Oil* decision does not support Petitioner's position herein.

Petitioner incorrectly suggests that the period of inalienability created by the Curtis Act was, somehow, tied to provisions regarding exemption from taxation. A reading of the plain language of Section 11, Curtis Act, shows the suggestion to be fallacious. The referenced provision states: " . . . That the lands allotted shall be nontransferable until after full title is acquired and shall be liable for no obligations contracted prior thereto by the allottee, and shall be nontaxable while so held." Three separate subjects are addressed by the quoted language concerning the temporary/provisional allotment. The final allotment, which conveyed fee title (tribal title was not disturbed by the Curtis Act allotments) included a specific twenty-one year tax exemption, as provided in the Original and Supplemental Creek Agreements. The rights of Petitioner's grandfather, including the tax exemption, arose from the Original and Supplemental Creek Agreements and the actual conveyances of homestead and allotment, as previously discussed. Thus, Petitioner's strained construction of the provisions of the Curtis Act is unavailing.

Whether to grant review on Petitioner's writ of certiorari is a matter of judicial discretion, which will only be granted for compelling reasons, Supreme Court Rule 10. As discussed, Petitioner's first question/proposition is simply not supported by either law or fact. Although neither controlling nor measuring the limits of the Court's

discretion, Supreme Court Rule 10 lists three examples of the character of the reasons the Court considers. None are applicable to Plaintiff's first question/proposition.

The Petition is for a writ to the Oklahoma Court of Civil Appeals, therefore, Supreme Court Rule 10(a), relating to decisions of U.S. Courts of Appeal, does not apply. The decision complained of by the Oklahoma Court of last resort is not of an "important federal question" and does not conflict with a decision of another State Court of last resort or of a U.S. Court of Appeals. Indeed, the decisions in this and the related case filed by Richard Bruner, Jr., are consistent with one another. Thus, Supreme Court Rule 10(b) does not apply. Finally, the Oklahoma Appellate Court did not decide an "important question of federal law" that has not been, but should be decided by this Honorable Court. Nor has the Oklahoma Appellate Court decided "an important federal question" in a way that conflicts with relevant decisions of this Court. Supreme Court Rule 10(c) is not applicable. In sum, Petitioner has failed to make a showing that his Petition invokes the discretion of this Honorable Court to assume jurisdiction.

Proposition 2: Statutes of limitation are tolled as to restricted (non-competent) Native Americans, but not as to restricted properties owned by Native Americans.

Petitioner's question/proposition 2 may be summarized: because decisional law regarding actions by restricted (non-competent) Native Americans to recover allegedly illegal/unconstitutional taxes assessed and paid, the same rule should apply to actions by Native Americans to recover allegedly illegal/unconstitutional taxes assessed and paid on restricted Indian lands.

Oklahoma's response to Petitioner's question/proposition 2 may be summarized: the U.S. Court of Appeals for the Tenth Circuit, in an unpublished opinion, affirming the decision of the U.S. District Court, N.D.OK, in the "companion" case filed by Petitioner's brother, correctly stated that the rule involving restricted (non-competent) Indians, against whom applicable statutes of limitation are tolled is based upon the special status of their allotments, pursuant to the General Allotment Act, which is not applicable to Native Americans such as Petitioner and his brother who are not restricted (non-competent) Indians. The *dicta* statement of the Oklahoma Court of Appeals, although confusing, is not inconsistent with the Tenth Circuit ruling.

Petitioner's second question/proposition is equally insufficient to invoke this Court's discretion. Petitioner contends that the decisions of the Oklahoma Court of Appeals and the U.S. Court of Appeals for the Tenth Circuit conflict as to the issue of application of the statute of limitations to the claims for refund in the two cases.

Petitioner relies upon a gratuitous, *dicta* holding of the Oklahoma Court. The Oklahoma Court proceeded to first determine whether Oklahoma had the authority to levy a gross production tax and petroleum " . . . on oil and gas produced from restricted Indian land". The Court believed this necessary because " . . . an action by a *restricted* Indian to recover an *illegal or unconstitutional* levy of taxes would not be subject to a statute of limitations" (emphasis supplied), citing *Nash vs. Wiseman*, 227 F.Supp. 552 (W.D.OK 1963). This observation was gratuitous and *dicta*, since the Oklahoma Appellate Court correctly determined that the levy of taxes was neither illegal nor unconstitutional.

The dicta statement led to confusion, since there is a difference between "restricted" (from alienation) land and use of the term "restricted" as applied to a Native American. The *Nash* case involved land owned by a Pottawatomie citizen, non-competent, who died intestate in 1952, owning property under "trust patents". The BIA prepared and filed estate tax returns and paid taxes, based upon the value of the "trust patent" property. Decedent's heirs filed for refund of the federal estate tax paid, claiming the property tax was exempt, because it was the allotment of a non-competent Indian. The defense of statute of limitations was raised. The District Court found and concluded that the allotment was made pursuant to the General Allotment Act of 1887. Further, the Court concluded that, pursuant to the General Allotment Act, those Native Americans who were the subject of the Act were wards of the U.S., for whom title to the allotted property was held in trust, pending future conveyance under the Act. (*Id.* at p. 553) Because the Plaintiffs in *Nash* were wards of the U.S., the Court declined to apply the rule of cases which applied the statute of limitations to Native Americans whose allotments were restricted. The Court distinguished cited decisions on the basis that Native Americans, such as members of the Choctaw and Creek Nations, who were not wards of the U.S. would be subject to statutes of limitation. (*Id.* at 554-555) The *Nash* Court would have held the Petitioner in this case to be subject to the relevant statute of limitations, because Petitioner is not a "restricted" (non-competent) Native American. The *Nash* rule, offered gratuitously and as *dicta* by the Oklahoma Appellate Court was correctly stated, it just wasn't applicable.

The decision of the U.S. Court of Appeals for the Tenth Circuit, in an unpublished opinion, 159 Fed. Appx. 859,

2005 WL 3485954 (C.A.10 (OK)), affirming the District Court decision in *Bruner vs. U.S.*, 340 F.Supp. 2d 1204 (W.D.OK 2004), rejected the argument made by Richard Bruner's counsel (the same counsel as in this case) that the statute of limitations should be equitably tolled. The U.S. Appellate Court noted that cases cited in support of this argument involved *restricted* (non-competent) Indians for whom tax returns had been filed by a government official, and that Richard Bruner was not restricted and filed his own tax returns. (*Id.* at 862-863) Further, the Court cited and relied it upon the decision of the U.S. Supreme Court in *U.S. vs. Brockcamp*, 519 U.S. 347, 117 S. Ct. 849, 136 L. Ed. 2d 818 (1997) for the proposition that 26 U.S.C. § 6511 was not subject to "equitable tolling".

Petitioner then suggests the applicability of an Internal Revenue Service Center Advice which related to the issue of "restricted" Indians and the statute of limitations, urging that the same rule should apply to restricted lands. The argument is fatally flawed, as the District Court in the Richard Bruner case determined.

Petitioner has failed to demonstrate any basis on which the Court's discretion is invoked, pursuant to Supreme Court Rule 10, as to his second question/proposition.

CONCLUSION

A Petition for Writ of Certiorari will only be granted for compelling reasons. Petitioner has failed to show that his petition states any grounds which come within Supreme Court Rule 10(a)-(c). There is but a single issue

which is determinative, and that issue was decided by the Oklahoma courts in conformity with long standing precedents of this Court. The case was correctly decided. This Honorable Court should decline to grant the Petition.

Respectfully submitted,

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EXHIBIT

E

COMPARED

HUGHES COUNTY

TOWNSHIP NO. 8 N RANGE NO. 9 E

SECTION 21

Roll No.	NAME	POST OFFICE	Age	Sex	Blood	DESCRIPTION	Acres	REMARKS
5443	Hilley Robison Enrolled Mar. 2,1900	Holdenville	14	F	Full	W2 NE¼NE¼ NE¼	120	Surp.Sold W2 NE¼ act of Cong. aprvd. July 1, 1902
						SE¼ NE¼	40	home
5444	Annie Robison Enrolled Mar. 2,1900	Holdenville	10	F	Full	W2 NE¼NE¼ NW¼	120	Surp.
						SE¼ NW¼	40	home
4893	Miller Bruner Enrolled Feb. 2,1900	Holdenville	22	M	Full	E2 SW¼SW¼ SW¼	120	Surp.
						NW¼ SW¼	40	home
5446	Lona Robison Enrolled Mar. 2,1900	Holdenville	6	F	Full	W2 SE¼SE¼ SE¼	120	Surp.
						NE¼ SE¼	40	Home
		SECTION 22						
4880	Thomas Long Enrolled Feb. 3,1900	Yeager	46	M	Full	S2 S2 NE¼ Less 2.42 ac. B.L.O.&S. RR. R.W.&Station Grounds	37.58	Surp.Sold act of Cong. aprvd. July 1902
5319	Martha Long Enrolled Feb. 16,1900	Holdenville	36	F	Full	W2 NW¼SE¼ NW¼	120	Surp.SW¼ NW¼ Sold act of Cong. aprvd. July 1,1902
						NE¼ NW¼	40	home
5323	Henry Yahola Enrolled May 10,1901	Holdenville	10	M	Full	N2 SW¼ Less 1.61ac B.L.O.&S. RR. R.W.	78.39	Surp.N2 SW¼ Less 1.61ac B.L.O.&S RR. R.W. act of Cong. aprvd. July 1,1902
5010	Waspee Enrolled May 22,1901	Holdenville	20	M	Full	SW¼ SW¼NE¼ SE¼ SW¼ Less 2.09ac B.L.O. &S. RR. R.W.	57.91	Surp.
4799	Katie Marshall Enrolled Feb. 1,1900	Yeager	3	M	Full	NW¼ NW¼ SE¼ Less 1.91ac B.L.O.&S. RR. R.W.	8.09	Surp.
4798	Susie Marshall Enrolled Feb. 1,1900	Yeager	4	F	Full	NE¼ NW¼ SE¼	10	Surp.
5539	Hattie Yargee Enrolled Mar. 10,1900	Wetumka	9	F	Full	E2 SE¼ SW¼SE¼ SE¼ NE¼ SE¼SE¼ NW¼ SE¼ Less 1.63ac B.L.O.& S. RR. R.W.	116.37	Surp.E2SE removed May 23 1910
						SW¼ SE¼	40	Home

STATE OF OKLAHOMA)
SS.
COUNTY OF HUGHES)

I, CAROL PRYOR, County Clerk in and for the County and State above named, do hereby certify that the foregoing is a true and correct copy of a like instrument now on file in my office.

WITNESS my hand and official seal this 25 day of September 1997

CAROL PRYOR, County Clerk

By _____ Deputy

COUNTY CLERK HUGHES COUNTY, OK

App. 1

13

BEST AVAILABLE COPY

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

IN THE MATTER OF THE GROSS PRODUCTION AND PETROLEUM EXCISE TAX PROTEST OF RUDOLPH BRUNER, Appellant, v. OKLAHOMA TAX COMMISSION, Appellee.	SUPREME COURT NO. 100,536 OTC CASE NO. CR-98-001-K

EXHIBIT D

ALLOTMENT DEED, (40) CREEK INDIAN ROLL, No. 4893

THE MUSKOGEE (CREEK) NATION,
INDIAN TERRITORY.

To all whom these presents shall come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901, (81 Stats., 801), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his

allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Miller Bruner, a citizen of said tribe, as an allotment, exclusive of a forty-acre homestead, as aforesaid,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Miller Bruner, all right, title, and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following-described land, via: The East Half of the South West quarter and the South West quarter of the South West quarter of Section Twenty-one (21), Township Eight (8) North, and Range Nine (9) East,

of the Indian Base and Meridian, in Indian Territory, containing One hundred and Twenty (120) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said Act of Congress relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and

caused the Great Seal of said Nation to be affixed this 25th day of September, A. D. 1903

/s/ P. Porter
Principal Chief of the
Muskogee (Creek) Nation.

DEPARTMENT OF THE INTERIOR,

[Illegible initials] Approved Oct 22 1903, 190

/s/ Ethan A. Hitchcock
Secretary
By Oliver A. Phelps Clerk

[12]

EXHIBIT C

HOMESTEAD DEED, (59) CREEK INDIAN ROLL, No. 4893

THE MUSKOGEE (CREEK) NATION,
INDIAN TERRITORY.

To all whom these presents shall come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901, (81 Stats., 801), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of _____ Miller Bruner ___, a citizen of said tribe, as a homestead.

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said ___ Miller Bruner _____, all right, title, and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following-described land, via: The North West quarter of the South West quarter of

Section Twenty-one (21), Township Eight (8) North, and Range Nine (9) East,

of the Indian Base and Meridian, in Indian Territory, containing Forty (40) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the conditions provided by said Act of Congress, and which conditions are that said land shall be non-taxable and inalionable and free from any incumbrance whatever for twenty-one years; and subject, also, to provisions of said Act of Congress relating to the use, devise, and descent of said land after the death of the said Miller Bruner; and subject, also, to all provisions of said Act of Congress relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 25th day of September, A. D. 1903

/s/ P. Porter
Principal Chief of the
Muskogee (Creek) Nation.

DEPARTMENT OF THE INTERIOR,

[LRS] Approved Oct 22 1903, 190

/s/ Ethan A. Hitchcock
Secretary
By Oliver A. Phelps Clerk

[11]

68 Okl.St.Ann. § 1008. Refund of overpayments, duplicate payments and erroneous payments – Rebuttable presumptions

A. Except as set forth in subsection B of this section, in all cases of overpayment, duplicate payment or payment made in error on account of the production being derived from restricted Indian lands and lands owned by the United States, the state, counties, cities, towns and school districts, and therefore exempt from taxation, the Oklahoma Tax Commission is authorized to refund any such over-paid duplicate or erroneously paid gross production taxes, where an application for such refund is made within three (3) years from the date of the payment thereof, out of any undistributed gross production tax collections in the depository account of the Oklahoma Tax Commission, from the same county from which the original tax was derived. Provided, however, this exemption shall apply only to the interest in such production owned by the restricted Indian or exempt governmental entity. A determination made by the federal government or any agency thereof in allowing a refund or recovery of overpayment, duplicate payment or erroneous payment of taxes arising out of the same circumstances under which a claim has been submitted to the Oklahoma Tax Commission for a refund may create a presumption that the evidence upon which the federal government or agency thereof relied in allowing a refund or recovery is correct. The Oklahoma Tax Commission shall not, however, be bound by such presumption of correctness, but may if it deems the circumstances to warrant, present evidence in rebuttal thereof.

B. Notwithstanding the provisions of subsection A of this section, the Oklahoma Tax Commission is authorized to refund directly to the Commissioners of the Land Office

any gross production tax paid to the Tax Commission in error after January 1, 1978, on any oil and gas royalty interest of the Commissioners of the Land Office out of any undistributed gross production tax collections in the depository account of the Oklahoma Tax Commission, from the same county from which the original tax was derived.

Said refund shall only be issued as the result of a determination by the Commissioners of the Land Office that said erroneous payment of such gross production tax has been made to the Tax Commission during the period after January 1, 1978. Such determination by the Commissioners of the Land Office may create a presumption that the evidence upon which the Commissioners of the Land Office relied in reaching the determination of erroneous payment is correct. The Tax Commission shall not, however, be bound by the presumption of correctness, but may if it deems the circumstances to warrant, present evidence in rebuttal thereof.

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68 Okl.St.Ann. § 1106. Exemption – Refund

The provisions of the gross production tax law in respect to refunds of such tax on the production derived from restricted Indian lands and lands owned by the United States, the state, counties, cities, towns and school districts, and therefore exempt from taxation, shall apply to petroleum excise tax on such exempt interest in said production from said lands.